

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

CRIMINAL NO. 1:04CR92-1

UNITED STATES OF AMERICA

VS.

JEREMY LUJAN AIKEN

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ORDER

THIS MATTER is before the Court on the Defendant's *pro se* motion to compel the Government to file a motion for a reduction of sentence. No response from the Government is necessary.

Rule 35 vests the discretion for a reduction in sentence based on assistance solely in the hands of the Government. The sentencing court cannot require the Government to make such a motion absent circumstances not presented here. ***United States v. Schaefer*, 120 F.3d 505, 508 (4th Cir. 1997); *United States v. Wallace*, 22 F.3d 84, 87 (4th Cir. 1994).**

The Defendant also seeks a reduction in sentence by citing U.S.S.G. § 5K1.1. Again, a motion for a downward departure based on substantial

assistance is the province of the Government during or after sentencing. Likewise, the Defendant's citation to 18 U.S.C. § 3553(e) is also futile because that section provides that any such motion must be made by the Government.

IT IS, THEREFORE, ORDERED that the Defendant's motion is hereby **DENIED**.

Signed: January 9, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg
United States District Judge

